IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:15-CR-108-3H
NO. 7:15-CR-108-4H

UNITED STATES OF AMERICA	)
	)
v.	)
	)
RUSTICO YABUT IGNACIO	)
CASSIUS FLORES SAMSON	)
OCEANIC ILLSABE LIMITED	)
OCEANFLEET SHIPPING LIMITED	)

MOTION TO TAKE JUDICIAL NOTICE

COME NOW, Organizational Defendants, OCEANFLEET SHIPPING LIMITED ("Oceanfleet") and OCEANIC ILLSABE LIMITED ("Oceanic") ("Organizational Defendants" or "Moving Defendants"), by and through undersigned counsel, who respectfully move this Honorable Court to take judicial notice that (1) under 33 C.F.R. § 151.25(j), the master of a vessel is the person responsible for the maintenance of the vessel's Oil Record Book; and (2) that June 14, 2015 was a Sunday. As grounds in support of the instant motion, the Organizational Defendants respectfully submit the following:

1. The Federal Rules of Evidence allow a court to take judicial notice of an adjudicative fact "that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b).

2. The Fourth Circuit Court of Appeals has also authorized district courts to take judicial notice of legislative facts, which have been defined as those facts "which have relevance to . . . the lawmaking process, whether in the formulation of a legal principle or ruling by a judge

or court or in the enactment of a legislative body." FED. R. EVID. 201(a) advisory comm. nn; *see also United States v. Gavegnano*, 305 Fed. Appx. 954, 956 (4th Cir. 2009) (unpublished).

3. This Court should take judicial notice of the language of 33 C.F.R. § 151.25(j), which unequivocally states that: "***The master or other person having charge of a ship*** required to keep an Oil Record Book ***shall be responsible for the maintenance of such record***." (emphasis added). As the Fifth Circuit Court of Appeals found in *United States v. Fafalios*, 817 F.3d 155 (5th Cir. 2016), the plain language of this regulation is unambiguous, mentioning "only the 'master' when assigning responsibility for maintaining the oil record book, which plainly indicates that the responsibility does not extend to others on the vessel." *Id.* at 159. The Fifth Circuit reached this conclusion by relying on both "traditional rules of statutory construction" and "common sense." *Id.* at 161.

4. 33 C.F.R. § 151.25(j)'s declaration that the vessel's master is the person responsible for maintenance of the Oil Record Book is fixed and does not change from case to case. As such, this Court should take judicial notice that the Vessel's master is the person responsible for maintaining the Oil Record Book under the applicable regulations as an unquestioned legislative fact. *Gavegnano*, 305 Fed. Appx. at 956; *see also United States v. Williams*, 442 F.3d 1259 (10th Cir. 2006) (citations omitted); *United States v. Hernandez-Fundora*, 58 F.3d 802, 813 (2d Cir. 1995) (clarifying that courts may take judicial notice of either legislative or adjudicative facts); *United States v. Gould*, 536 F.2d 216 (8th Cir. 1976).

5. This Court may also take judicial that June 14, 2015 was a Sunday, as this fact is an adjudicative fact that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" under FED. R. EVID. 201(b)(2).

6. Courts within the Fourth Circuit have consistently and repeatedly taken judicial notice of dates, including which day of the week corresponded to a particular calendar date. *See, e.g.*, *Holder v. Town of Zebulon*, 2014 U.S. Dist. LEXIS 86603, * 10 (E.D.N.C. 2014) (recognizing that the court could take judicial notice of the fact that December 9, 2012 fell on a Sunday); *Tate v. Martin*, 2014 U.S. Dist. LEXIS 36635, * 4 n. 2 (M.D.N.C. 2014) (taking judicial notice that Monday, January 16, 2006 was Martin Luther King Day, a federal holiday); *King v. Ozmint*, 2013 U.S. Dist. LEXIS 126561, * 32 n. 10 (taking judicial notice that January 19-21, 2008 was a three-day weekend and that Monday, January 21, 2008 was Martin Luther King Day); *Benham v. City of Charlotte*, 682 F. Supp. 2d 549, 552 n. 1 (W.D.N.C. 2010) (taking judicial notice that January 22, 2007 was a Monday); *A.A.M.C. Inc. v. B.A.C. Dist. Council of W. Va. Bricklayers/Cement Masons Local Union No. 15*, 2007 U.S. Dist. LEXIS 88126, * 34 n. 12 (N.D. W. Va. 2007) (taking judicial notice that Memorial Day 2006 was Monday, May 29, 2006); *Breckley v. Amway Corp.*, 1989 U.S. Dist. LEXIS 14693, * 3 n. 5 (D.S.C. 1989) (taking judicial notice of the fact that that March 4, 1989 fell on a Saturday).

7. The fact that June 14, 2015 was a Sunday cannot reasonably be questioned. As such, this Court should take judicial notice of this adjudicative fact under FED. R. EVID. 201.

CONCLUSION

WHEREFORE, Organizational Defendants respectfully ask this Honorable Court to grant the instant motion by taking judicial notice that the Vessel's master is the person responsible for maintaining the Oil Record Book under 33 C.F.R. § 151.25(j) and that June 14, 2015 was a Sunday, and by granting such further and other relief as may be just and equitable under the circumstances.

Date: August 29, 2016

CHALOS & CO, P.C.

Trial Counsel for Defendants OCEANIC ILLSABE LTD and OCEANFLEET SHIPPING LTD.

/s/ George M. Chalos
George M. Chalos
NY State Bar No. 2901031
Briton P. Sparkman
NY State Bar No. 4680732
55 Hamilton Avenue
Oyster Bay, New York 11771
Telephone: (516) 714-4300
Facsimile: (516) 750-9051
Email: gmc@chaloslaw.com

- and -

CLARK, NEWTON & EVANS, P.A.

Local Criminal Rule 57.1 Counsel for Defendants OCEANIC ILLSABE LTD, and OCEANFLEET SHIPPING LTD.

/s/ Seth P. Buskirk
Seth P. Buskirk
NC Bar No. 36664
509 Princess St.
Wilmington, NC 28401
Telephone: (910) 762-8743
Facsimile: (910) 762-6206
Email: dte@clarknewton.com

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, I arranged for a copy of the foregoing Motion to be served via cm/ECF for the United States of America, as follows:

Attorneys for United States of America

Environmental Crimes Section
U.S. Department of Justice
P.O. Box 23985
L'Enfant Plaza Station
Washington, DC 20026-3985
Kenneth Nelson
Kenneth.Nelson3@usdoj.gov
Brendan Selby
Brendan.Selby@usdoj.gov

Banu Rangarajan
United States Attorneys' Office
Eastern District of North Carolina
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Banu.Rangarajan@usdoj.gov

/s/ George M. Chalos
George M. Chalos
NY State Bar No. 2901031